

LIMITED LIABILITY COMPANY ORDINANCE

Ordinance # 03-800-02

Article I. Purpose, Findings

1.01. *Purpose.* The purpose of this Ordinance is to permit, pursuant to the law of the Little River Band of Ottawa Indians, the formation of limited liability companies, and to regulate such companies so as to promote economic development, job creation, growth and a strong tribal economy and further the exercise of sovereignty over the lands within the jurisdiction of the Little River Band of Ottawa Indians.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a)*; and
3. “to create by ordinance regulatory commissions or subordinate organizations and to delegate to such organizations the power to manage the affairs and enterprises of the Little River Band, provided that no such commission or subordinate organization shall exercise powers of the Tribal Council unless they are expressly delegated by the Tribal Council.” *Article IV, Section 7(f)*.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by resolution # 03-0604-146.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.04. *Reservation of Power.* The Tribal Council has the power to amend, repeal or modify this Ordinance. Such amendments, repeals or modifications shall be of prospective application only and shall not apply retroactively to any limited liability company previously organized pursuant to this Ordinance.

2.05. *Sovereign Immunity.* Nothing herein shall be construed as a waiver of the sovereign immunity of the Little River Band of Ottawa Indians. The sovereign immunity of the Little River Band of Ottawa Indians shall not extend to limited liability companies formed under this Ordinance. In no event shall the Tribe, whether as a member or otherwise, be liable for the debts, obligations or liabilities of any kind or description (including any pre-filing activities) of limited liability companies organized under this Ordinance; provided, however that the Tribe may waive its sovereign immunity or actions taken as a member pursuant to the extent and on such terms as are contained in an express written resolution of the Tribal Council.

Article III. Definitions

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

3.02. *Articles of Organization* means the original articles of organization filed under s. 5.10 and all amendments thereto or alterations and restatements.

3.03. *Authorized Designee* means an officer or entity authorized by resolution of the Tribal Council to take

specified actions on behalf of the Tribe pursuant to this Ordinance.

3.04. *Business* means every trade, occupation or profession of every variety or type.

3.05. *Ordinance* means this Limited Liability Company Ordinance.

3.06. *Director* means the Director of the Department of Commerce.

3.07. *Department* means the Department of Commerce.

3.08. *Limited Liability Company* means a limited liability company organized under this Ordinance.

3.09. *Foreign Limited Liability Company* means a limited liability company organized under the laws of any other Tribe, State or foreign country other than under this Ordinance.

3.10. *Operating Agreement* means any written agreement relating to the conduct of the business and affairs of a limited liability company, which is initially signed by and binding upon all of its members.

3.11. *Person* means any natural person, corporation, limited liability company, other business entity and any government and its political subdivisions.

3.12. *Reservation* means all those lands encompassed by the exterior boundaries of the Manistee Reserve, reserved in Article Second of the Treaty of March 28, 1836 (7 Stat. 491) and Townships 17 and 18 North, Range 16 West, as reserved in Article First, paragraph Sixth of the Treaty of Detroit of July 31, 1855, and all lands now or in the future held in trust by the United States for the benefit of the Tribe.

3.13. *Successor Limited Liability Company* means the surviving or resulting limited liability company existing pursuant to a merger or consolidation of two or more limited liability companies or other business entities.

3.14. *Tribal Council* means the Tribal Council of the Little River Band of Ottawa Indians.

3.15. *Tribal Court* means the Commercial Division of the Tribal Court of the Tribe.

3.16. *Tribe* means the Little River Band of Ottawa Indians.

Article IV. General Provisions

4.01. *Citation*. This Ordinance shall be known as the “Limited Liability Company Ordinance” and cited as the “LLC Ordinance.”

4.02. *Implementation and Administration*. The Department of Commerce shall administer the provisions of this Ordinance.

4.03. *Rules*. The Department shall adopt regulations consistent with this Ordinance pertaining to the filing of documents under this Ordinance. Such regulations shall be approved by the Ogema and adopted by the Tribal Council consistent with the adoption of regulations under the Tribe’s structure and ordinances as may be adopted by the Tribal Council.

4.04. *General*. Any powers reserved for the Tribe under this Ordinance, apart from the power to waive sovereign immunity, may be delegated to the authorized designee by the Tribal Council.

Article V. Formation, Registered Agent, Powers and Certain Organizational Matters

5.01. *Formation*.

a. One or more persons may form a limited liability company under this Ordinance by delivering to the Department a certified copy of the authorization and articles of organization for the limited liability company complying with the requirements of s. 5.12 and executed as required by s. 5.15.

b. A limited liability company shall at formation of the limited liability company and at all times have at least one member. The person or persons forming the limited liability company need not be members of the limited liability company at the time of formation or as of any time thereafter.

c. Failure to maintain at least one member in accordance with the requirements herein shall be an event of dissolution, in accordance with this Ordinance.

5.02. *Registered Agent*.

a. Each limited liability company organized under this Ordinance shall continuously have and maintain a registered agent on the Reservation for service of process on the limited liability company

and a registered office on the Reservation.

b. The registered agent shall be a person residing on the Reservation.

c. Failure to maintain a registered agent or registered office as aforesaid shall be grounds for involuntary dissolution of the limited liability company by the Department in accordance with the terms hereof. It shall be the responsibility of the limited liability company to maintain up-to-date records regarding registered agents and registered offices.

5.03. *Registration of Foreign Limited Liability Companies.* All foreign limited liability companies doing business with the Tribe or on Tribally-owned fee or trust lands shall file a registration statement with the Department on a form provided by the Department. If a Tribal member is either a member or manager of a foreign limited liability company doing business within the Reservation, such foreign limited liability company shall file a registration statement with the Department.

5.04. *Nature of Business Permitted; Powers.*

a. Except as otherwise provided by the laws of the Tribe, a limited liability company may be organized and formed to conduct or promote any lawful business or purpose. If the purpose for which a limited liability company is formed subjects the limited liability company to other provisions of applicable law, the limited liability company shall comply with such provisions.

b. Each limited liability company organized and existing under this Ordinance may exercise the powers and privileges granted by this Ordinance or by any other law, together with any powers and privileges incidental thereto or necessary or convenient to effect any or all of the purposes for which the limited liability company is organized, including, without limitation, the power to:

1. purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated; provided that a limited liability company shall be without authority to sell, mortgage, or assign personal or real property that is owned by the Tribe; further provided that a limited liability company shall have authority to lease real property from the Tribe and sublease such property to the Tribe or other parties, in accordance with the provisions of 25 U.S.C. 477, as amended.

2. sell, convey, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets; provided that a limited liability company shall be without authority to sell, mortgage, or assign personal or real property that is owned by the Tribe;

3. purchase, take, receive, subscribe for, invest in, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, otherwise dispose of, or otherwise use or deal in or with:

A. shares or other interests in or obligations of other limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals; or

B. direct or indirect obligations of the United States or government, any other Indian Tribe, state, territory, governmental district, or municipality or of any instrumentality of them or any other government;

4. make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income, provided that a limited liability company shall be without authority to mortgage or pledge any personal or real property that is owned by the Tribe;

5. invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so invested;

6. conduct its business and maintain offices and exercise the powers granted by this

Ordinance within or outside the Reservation;

7. elect or appoint managers and agents of the limited liability company, define their duties, and fix their compensation; make, execute, amend and restate an operating agreement not inconsistent with its articles of organization or with the laws of the Tribe for the administration and regulation of its affairs;

8. subject to such standards and restrictions, if any, set forth in this Ordinance or in its operating agreement, indemnify a member or manager or any other person against expenses actually and reasonably incurred by the member or manager in connection with the defense of an action, suit, or proceeding, whether civil or criminal, in which the member or manager is made a party;

9. cease its activities and surrender its articles of organization;

10. transact any lawful businesses which the members or the managers find to be in aid of governmental policy, subject, in all cases, to applicable law;

11. pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its managers and employees;

12. be a promoter, incorporator, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company joint venture, trust, or other enterprise; and

13. exercise any other lawful power or privilege necessary or convenient for the conduct of its business.

5.05. *Legal Status of Limited Liability Companies; Sovereign Immunity for Limited Liability Companies Owned by the Tribe.*

a. *Legal Status of Limited Liability Companies.* All limited liability companies organized under this Ordinance, whether owned by the Tribe, Tribal members, or non-members, shall be distinct legal personalities existing under Tribal law resident on the Reservation possessing all of the rights and obligations as natural persons who are citizens or members of the Little River Band of Ottawa Indians.

b. *Sovereign Immunity for Limited Liability Companies Owned by the Tribe.*

1. *Sovereign Immunity of Tribally-Owned Limited Liability Companies.* Except as expressly provided in this section, limited liability companies which are owned by the Tribe are clothed by federal and tribal law with all of the privileges and immunities of the Tribe, including sovereign immunity from suit in any state, federal or tribal court. Nothing in this Ordinance shall be deemed or construed to be a consent of the Tribe to the jurisdiction of any state or of any other tribe with regard to the business and affairs of any wholly Tribally-owned limited liability company.

2. *Limited Waiver of Immunity for Limited Liability Companies Owned by the Tribe.* The sovereign immunity of any limited liability company owned by the Tribe is waived only in the following instances:

A. Claims arising out of injuries to persons or property proximately caused by the negligent acts or omissions of a Tribally-owned limited liability company;

B. Claims arising out of injuries arising out of injuries to persons or property proximately caused by the conditions of any property that is owned, leased or occupied by a Tribally-owned limited liability company;

C. Claims arising from any written contract or sales agreement, including warranty and similar claims brought by parties expressly made third-party beneficiaries under the terms of such contract or sales agreement, to which a Tribally-owned limited liability company is a party.

5.06. *Taxation of Limited Liability Companies.* For purposes of taxation by the Tribe, if any, a limited

liability company transacting business on the Reservation shall be classified in the same manner as it is classified for federal income tax purposes.

5.07. Reservation of a Name.

- a. Subject to the terms of s. 5.09, the exclusive right to the use of a name may be reserved by:
 1. A person intending to organize a limited liability company under this Ordinance and to adopt that name; or
 2. A limited liability company organized under this Ordinance intending to utilize the name as an assumed name or intending to change its name.
- b. The reservation of a name is made by filing with the Department an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant.
 1. If the Department finds that the name is available for use by a limited liability company, the Department shall reserve the name for the exclusive use of the applicant for a period of 120 days.
 2. Once having reserved a name, the same applicant may reserve the same for two successive 120 day periods.
 3. The right to the exclusive use of a reserved name may be transferred to another person by filing with the Department a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee.
 4. The reservation of a specified name may be canceled by filing with the Department a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

5.08. Assumed Name.

- a. As used in this section, "assumed name" includes a trade name or a name other than the true name of a limited liability company.
- b. Upon complying with this section, but subject to the terms of s. 5.09, a limited liability company organized under this Ordinance may transact its business under one or more assumed names.
- c. Before transacting business on the Reservation under an assumed name, the limited liability company shall execute and deliver for filing a statement setting forth:
 1. The name of the limited liability company and the address of its registered office;
 2. That it intends to transact business under assumed name;
 3. The assumed name that it proposes to use; and
 4. Whether the assumed name will be used at fewer than all of the limited liability company's places of business, and if so, where it will be used.
- d. A separate statement must be executed and delivered for filing for each assumed name that the limited liability company proposes to use.
- e. Each assumed name must comply with the requirements of s. 5.09, except for the case of similarity with the true name of the limited liability company proposing to use the assumed name.
- f. A limited liability company may terminate an assumed name by executing and delivering for filing a statement setting forth:
 1. The name of the limited liability company and the address of its registered office;
 2. That it no longer intends to transact business under the assumed name; and
 3. The assumed name that it intends to terminate.
- g. Notwithstanding compliance with the requirements of this section, the use of an assumed name may be enjoined by the Department or by a person adversely affected by such use if the assumed name is deceptively similar to a name in which a person has prior rights to that name.
- h. For purposes of determine priority of rights, the mere filing of a statement pursuant to subsection (c) does not constitute actual use of the assumed name set out in the statement.

5.09. *Name Exclusive Right.*

a. The name of each limited liability company as set forth in the articles of organization and any assumed name:

1. shall not contain the words "Little River Band of Ottawa Indians", "Little River", or "Tribe", nor in any way imply that it is associated with the Tribe, its government or that it is an entity of the Tribe, or words or any abbreviation with a similar meaning in any other language, unless the Tribe authorizes the use of such name in its authorization pursuant to s. 5.01(a) or in another authorization delivered to the Department;
2. shall contain the words "limited liability company," or the abbreviation "L.L.C." or "LLC", unless filing an assumed name under s. 5.08 or a registration of name under s. 5.07.
3. shall not contain the words "association," "corporation," "incorporated," "limited partnership," "limited," "L.P.", "Ltd.", or language or words or any abbreviation with a similar meaning in any other language except as part of the phrase limited liability company.

b. The name of a limited liability company must be distinguishable upon the records of the Department from:

1. the name of any other limited liability company formed or authorized to transact business on the Reservation; or
2. the Tribe or any of its affiliate governmental groups, bands or organizations, unless the Tribe has authorized the use of such name in accordance with the terms of this Ordinance.

c. The name of a limited liability company may be the same or substantially similar if the registered owner or holder of the mark or name is the same person or entity as the limited liability company seeking to use the same or similar name and files proof of ownership with the Department.

d. The Director shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the Department by this s. 5.09, including determining whether a name or assumed name is deceptively similar to another name or assumed name. The Department shall make the final determination regarding the availability of any name for filing. Without limiting the foregoing, the Department in its discretion, may refuse to file a name or assumed name that:

1. Consists of or comprises language that is obscene, contemptuous, profane or prejudicial;
2. Inappropriately promotes abusive or unlawful activity; or
3. Falsely suggests an association with the Tribe or public institutions, unless authorized by the Tribe in accordance with the terms of this Ordinance.

5.10. *Limited Liability Company Name - Limited Rights.* The authorization to file articles of organization under or to reserve or register a limited liability company name as granted by the Department does not:

- a. abrogate or limit the law governing unfair competition or unfair trade practices;
- b. derogate from the common law, the principles of equity, or the laws of the Tribe or of the United States with respect to the right to acquire and protect names and trademarks; or
- c. create an exclusive right in geographic or generic terms contained within a name.

5.12. *Articles of Organization.*

a. In order to form a limited liability company under this Ordinance, articles of organization must be filed with the Department. The articles of organization of a limited liability company shall set forth:

1. the name of the limited liability company;
2. the period of its duration, which shall not exceed 99 years from the date of filing with the Department;
3. the street address of its registered office;
4. the name and signature of its initial registered agent at that address, as required by s. 5.02;
5. if the limited liability company is to be managed by a manager or managers:

- A. a statement to that effect;
- B. the number of managers permitted; and
- C. if the initial manager have been selected, the name and business, residence or mailing address of each manager.

6. if the management of a limited liability company is reserved to the members, the names and street addresses of the members; and

7. any other provision, not inconsistent with law, that the members choose to include in the articles of organization for the regulation of the internal affairs of the limited liability company.

5.13. *Filing of Articles.*

a. The article of organization shall be filed with the Department. The documents to be filed shall be executed as provided in s. 5.18, or be true copies made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been properly executed.

b. Unless it finds that the articles of organization or certificate of amendment do not conform to law as to their form, the Department, upon receipt of all filing fees established hereunder, shall:

- 1. place a stamp or seal on the filing, indicating the time, day, month, and year of the filing, the name of the Department, the signature of the Director, and the Department's seal, or facsimiles of them;
- 2. file one copy in its office; and
- 3. return a copy to the person who filed it or as directed by the person who filed it.

5.14. *Amendment to Articles.*

a. The articles of organization of a limited liability company are amended by filing articles of amendment with the Department. The articles of amendment must set forth:

- 1. The name of the limited liability company; and
- 2. The amendment or amendments to the articles.

b. A manager or, if there is no manager, a member who becomes aware that a statement in the articles of organization or articles filed under this section has become inaccurate in any material respect as a result of subsequent events shall promptly amend the articles.

c. No later than 90 days after the following event or events occur, an amendment to the articles of organization reflecting the event or events must be filed by a manager or, if there is no manager, by a member:

- 1. A change in the name of the limited liability company;
- 2. A change in the address of the registered office or a change in the name, identity or address of the registered agent of the limited liability company;
- 3. A change in whether the management of the limited liability company is vested in managers or member; or
- 4. A manager or, if there is no manger, a member becomes aware that the articles of organization contain a false or erroneous statement.

d. Except as otherwise provided in the articles of organization, articles of organization may be amended at any time for any other purpose by a majority of the members unless the operating agreement otherwise provides. Each limited liability company shall file with the Department a copy of any amendment to the articles within 60 days after the adoption of the amendment.

e. If, after the dissolution of a limited liability company but before the filing of a certificate of cancellation as provided in s. 12.03, a person other than an individual shown on the articles of organization as a manager is winding up the limited liability company's affairs, then the articles of organization must be amended to set forth the name and the business, and residence or mailing address of each person winding up the limited liability company's affairs. Each person winding up the affairs shall execute and file articles of amendment. That person is not subject to liability by

reason of such an amendment. A manager who is not winding up a limited liability company's affairs need not execute articles of amendment under this subsection.

f. A limited liability company may at any time file a restatement of its articles of organization that integrates into a single document the provisions of its articles of organization giving effect to all amendments previously adopted and, if authorized, further amendments. The restated articles of organization, either in the heading or in an introductory paragraph must set forth:

1. That it is a restatement;
2. The limited liability company's present name;
3. If the name has been changed, the name under which it was originally filed; and
4. The date of filing of the initial articles of organization.

g. The restated articles of organization must be executed and filed in the manner provided for any other amendment to the articles of organization. Upon filing of the restated articles of organization by the Department, the restatement, including further amendments made as a result of the restatement, constitutes the articles of organization of the limited liability company pursuant to s. 5.13.

5.15. *Certificate of Correction.* A manager or, if there is no manager, a member who becomes aware that any statement in the articles of organization of a limited liability company, or a certificate filed under this Ordinance was inaccurate when made, shall file a certificate of correction with the Department. The certificate of correction must specify the inaccuracy or defect to be corrected and must set forth the portion of the instrument in corrected form. The corrected instrument is effective as of the date the original instrument was filed, except for those persons who are substantially and adversely affected by the correction. For those persons, the corrected instrument is effective from the filing date.

5.16. *Effect of Filing and Pre-filing Activities.*

a. Upon the placement of a stamp or seal, as provided in s. 5.13(b), on the articles of organization, the limited liability company shall be considered organized, as a separate legal entity whose existence as such continues until cancellation of the limited liability company's articles of organization.

b. Except as against the Department in a proceeding to cancel or revoke the articles of organization or in a proceeding for involuntary dissolution of the limited liability company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members have been complied with and that the limited liability company has been legally organized under this Ordinance.

c. A limited liability company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the articles of organization have been filed with the Department. Persons engaged in pre-filing activities other than those authorized by this section shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the limited liability company incurred on behalf of the limited liability company prior to the filing of its articles of organization with the Department.

5.17. *Records.*

a. Each limited liability company shall keep at its principal place of business the following:

1. a current list in alphabetical order of the full name and last known business street address of each member;
2. a copy of the stamped articles of organization and all certificates of amendment to them, collectively referred to as the "articles of organization," together with executed copies of any powers of attorney pursuant to which any certificate of amendment has been executed;
3. copies of the limited liability company's federal, state and tribal income tax returns and reports, if any, for the three most recent years;

4. copies of any financial statements of the limited liability company, if any, for the three most recent years;
5. a copy of the limited liability company's operating agreement, if any; and
6. unless otherwise set forth in the articles of organization or the operating agreement, a written statement setting forth:

- A. the amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member;
- B. the times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;
- C. any right of a member to receive distributions which include a return of all or any of the member's contributions; and
- D. any event upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

b. Records kept under this section are subject to inspection and copying during ordinary business hours by members for a proper purpose and subject to such reasonable confidentiality and limitation of use requirements as the limited liability company may require, all at the expense of the requesting member. The purpose must be stated with reasonable particularity and the records must be directly related to the purpose. The Department or Tribal Court may subpoena any of these records if a limited liability company improperly denies any member access to the records for a proper purpose.

5.18. *Execution of Documents.*

a. Unless otherwise specified in this Ordinance, each certificate or report required by this Ordinance to be filed with the Department shall be executed in the following manner:

1. In the case of the initial articles of organization, by the person or persons forming the limited liability company as authorized by this Ordinance;
2. a certificate of amendment shall be signed by at least one manager, or at least one member if the limited liability company is managed by its members; subject to any restriction or requirement in the operating agreement or articles of organization; and
3. a certificate of cancellation or any other document filed after the dissolution of the limited liability company shall be signed by all of the managers or, if the members are winding up the limited liability's affairs, then by a majority in interest of the members; and if neither the manager or the members are winding up the affairs of the limited liability company, then by all of the liquidating trustees, subject to any restriction or requirement in the operating agreement or articles of organization;

b. The execution of a certificate or articles of an oath or affirmation by the person executing the document shall be under the penalties of perjury that the facts stated in the articles or certificate are true and that any power of attorney used in connection with the execution of the articles or certificate is proper in form and substance.

c. If a person required by subsection (a) to execute articles or a certificate fails or refuses to do so, then a person who is adversely affected by the failure or refusal may petition the Tribal Court to direct the execution of the articles or certificate as follows:

1. If the Tribal Court finds that the certificate or articles should be executed and that the person or persons designated to execute the certificate or articles have failed or refused to do so, the Tribal Court shall order the Department to record the appropriate certificate or articles.
2. Venue for an action under this section lies in the Tribal Court.

5.16. *Penalty for False Execution.*

a. If any certificate of cancellation, articles of organization or articles of amendment contain a materially inaccurate statement, a person who suffers loss by reasonable reliance on the statement

may recover damages for the loss from:

1. A manager or member who executed the certificate or articles and knew or should have known the statement was inaccurate in a material respect at the time the certificate or articles were executed; and
 2. A manager or, if none, any member who thereafter knows that an arrangement or other fact described in the certificate or articles is inaccurate in any material respect or has changed, making the statement inaccurate in any material respect, if that manager or member had sufficient time to amend or cancel the certificate or articles or to file a petition for the amendment or cancellation before the statement was reasonably relied upon.
- b. Notwithstanding subsection (a), a manager or member has no liability for failing to cause the amendment or cancellation of a certificate or articles to be filed or failing to file a petition for amendment or cancellation pursuant to subsection (a) if the articles or amendment, certificate of cancellation or petition is filed within 90 days of the date that manager or member knew or should have known the certificate or articles were inaccurate in any material respect.

Article VI. Relations of Members and Managers to Persons Dealing with a Limited Liability Company

6.01. *Agency Power of Members and Managers.*

- a. Except as provided in subsection (b), each member is an agent of a limited liability company for the purpose of its business or affairs, and the acts of a member, including, but not limited to, the execution in the name of a limited liability company of an instrument for carrying on the business or affairs of that limited liability company of which that person is a member binds a limited liability company, unless the acting member has no authority to act for the limited liability company in a particular matter, and the person with whom that member is dealing has knowledge of the fact that the member has no such authority.
- b. If the articles of organization provide that management of a limited liability company is vested in a manager or managers:
 1. A member, acting solely in the capacity as a member, is not an agent of a limited liability company; and
 2. Each manager is an agent of a limited liability company for the purpose of its business or affairs, and the act of a manager, including, but not limited to, the execution in the name of that limited liability company of an instrument, for carrying on in the usual way the business or affairs of that limited liability company of which that person is the manager, binds that limited liability company, unless the acting manager has no authority to act for the limited liability company in a particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.
- c. An act of a manager or a member that is not apparently for carrying on in the usual way the business or affairs of a limited liability company does not bind that limited liability company unless authorized in accordance with an operating agreement or articles of organization at the time of the transaction or at any other time.
- d. An act of a manager or member in contravention of a restriction on authority does not bind a limited liability company to persons having knowledge of the restriction.

6.02. *Admissions of Members and Managers.*

- a. Except as provided in subsection (b), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of a member's authority as provided for by this Ordinance is evidence against that limited liability company.
- b. If the articles of organization provide that management of a limited liability company is vested in a manager or managers:
 1. An admission or representation made by a manager concerning the business or affairs of

a limited liability company within the scope of the manager's authority as provided for by this Ordinance is evidence against that limited liability company; and

2. An admission or representation of a member, acting solely in that member's capacity as a member, does not constitute evidence against a limited liability company.

6.03. *Limited Liability Company Charged with Knowledge of or Notice to Member or Manager.*

a. Except as provided in subsection (b), notice to a member of a matter relating to the business or affairs of a limited liability company, and the knowledge of the member acting in the particular matter acquired while a member or of which the person had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

b. If the articles of organization provide that management of a limited liability company is vested in a manager or managers:

1. Notice to a manager of a matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the person had knowledge at the time of becoming a manager and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

2. Notice to or knowledge of a member of a limited liability company, while that member is acting solely in that member's capacity as a member is not notice to or knowledge of a limited liability company.

6.04. *Limited Liability Company Liable for Member's or Manager's Actionable Conduct; Misapplication.*

a. A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the limited liability company or with the authority of the limited liability company.

b. If, in the course of its business, a limited liability company receives money or property of a person not a member that is misapplied by a member or a manager while it is in the custody of the limited liability company, the limited liability company is liable for the loss.

6.05. *Liability to Third Parties.*

a. Except as otherwise provided in this Ordinance, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability company. A member or manager of a limited liability company is not obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of a limited liability company.

b. Except as provided in subsection (c), the failure of a limited liability company to observe the usual limited liability company formalities or requirements relating to the exercise of its limited liability company powers or management of its business and affairs is not a ground for imposing personal liability on the members or managers for liabilities of the limited liability company.

c. All or specified members of a limited liability company may be liable in their capacity as members for all or specified debts, obligations or liabilities of the limited liability company only if:

1. A statement to that effect is contained in the articles of organization; and

2. Any member so liable has either voted for the adoption of the provision or has consented in writing to be bound by the provision.

d. A member of a limited liability company may act as guarantor or surety, may provide collateral

or may otherwise assume responsibility for the debts, obligations or liabilities of the limited liability company whether or not a statement under paragraph (c)(1) exists or a vote or consent under paragraph (c)(2) has occurred.

6.06. *Parties to Actions.* A member of a limited liability company is not a proper party to a proceeding by or against that limited liability company, solely by reason of being a member of that limited liability company, except:

- a. If the object of the proceeding is to enforce a member's right against or liability to that limited liability company; or
- b. In a derivative action brought pursuant to Ordinance.

Article VII. Rights and Duties of Members and Managers

7.01. *Management; Voting; Classes.*

a. Unless the articles of organization provide that management of a limited liability company vests in a manager or managers, management of the business or affairs of that limited liability company is vested in the members. Subject to provisions in the operating agreement or this Ordinance restricting or enlarging the management rights and duties of a person or group or class of persons, the members have the right and authority to manage the affairs of a limited liability company and to make all decisions with respect to that limited liability company.

b. An operating agreement or the articles of organization –

1. may provide for classes or groups of members having such relative rights, powers and duties as the operating agreement or the articles of organization may provide, and may make provision for the future creation in the manner provided in the operating agreement or the articles of organization of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. An operating agreement or articles of organization may provide for the taking of an action, including the amendment of the operating agreement or articles of organization, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the operating agreement or articles of organization a class or group of limited liability company interests that was not previously outstanding.
2. may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers on any matter or to provide that any member or group of members shall have no voting rights.
3. that grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of this notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any right to vote.

c. If the articles of organization provide that management of a limited liability vests in one or more managers, then these persons have the power to manage the business and affairs of that limited liability company as is provided in the operating agreement or the articles of organization. Unless otherwise provided in an operating agreement or the articles of organization, these persons:

1. Must be designated, appointed, elected, removed or replaced by a vote, approval or consent of a majority of members on a per capita basis;
2. Need not be members of that limited liability company or natural persons; and
3. Unless they have been earlier removed or have earlier resigned, shall hold office until their successors have been elected and qualified.

d. An operating agreement or the articles of organization may provide for classes or groups of managers having such relative rights, powers and duties as the operating agreement or the articles of organization may provide, and may make provision for the future creation in the manner provided in the operating agreement or the articles of organization of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. An operating agreement or the articles of organization may provide for the taking of an action, including the amendment of the operating agreement or the articles of organization, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the operating agreement or the articles of organization a class or group of limited liability company interests that was not previously outstanding.

1. An operating agreement or the articles of organization may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matters. Unless otherwise provided in the operating agreement or the articles of organization, voting by managers is on a per capita basis.

2. An operating agreement or articles of organization that grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of the notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any right to vote by the managers.

7.02. *Duties of Managers and Members.*

a. The managers and members of a limited liability company shall exercise their powers and discharge their duties in good faith and in a manner that such manager or member reasonably believes to be in the best interests of the limited liability company and shall discharge their duties with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. In discharging their duties, managers and members who do not have knowledge that makes reliance unwarranted may rely upon financial statements of the limited liability company that were either certified in writing by an independent or certified public accountant or firm of such accountants fairly to reflect the limited liability company's financial condition, or reported to such manager or member to be correct by the manager, member or officer having charge of the books of accounts of the limited liability company. Managers and members are also entitled to rely on:

1. one or more officers or employees of the limited liability company whom the managers and members reasonably believe to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

2. legal counsel, public accountants, or other persons retained by the limited liability company as to matters involving skills or expertise the managers and members reasonably believe are matters

A. within the particular personal professional or expert competence or

B. as to which the particular person merits confidence; or

3. a committee of the limited liability company of which the managers and members are not a member if the managers and members reasonably believe the committee merits confidence.

b. A manager or member may not be held personally liable for monetary damages for failure to discharge any duty as a manager or member unless the manager or member is found not to have

1. acted honestly,

2. acted in the reasonable belief that the action was in or not opposed to the best interests of the limited liability company or its members or

3. discharged his duties with the care that an ordinarily prudent person in a like position would exercise under similar circumstances.
- c. Notwithstanding anything to the contrary in this Ordinance, in no event shall the Tribe be liable under this Ordinance, whether as a member or manager, and whether for violation of any duties imposed by this Ordinance or otherwise for any amount beyond its investment and the related interest it has in the limited liability company.
- d. Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by that person from any transaction connected with the conduct or winding up of the limited liability company entrusted to the person as a result of that person's status as manager or member, unless that person has obtained the consent of:
 1. If a manager, more than one half by number of the disinterested managers or more than one half by number of the disinterested members; or
 2. If a member, more than one half by number of the disinterested members.
- e. The provisions of this section may not be modified or waived in an operating agreement, the articles of organization or otherwise.

7.03. *Voting.*

- a. Except as provided in the operating agreement, the articles of organization or this Ordinance and subject to subsection (b), the affirmative vote, approval or consent of more than half by number of the members on a per capita basis, if management of a limited liability company is vested in the members, or of more than one-half of the managers or other persons vested with management authority of that limited liability company, if the management of that limited liability company is vested in such managers or persons, is required to decide any matter connected with that limited liability company's business.
- b. Except as provided in the operating agreement or the articles of organization, the affirmative vote, approval or consent of all members is required to:
 1. Amend an operating agreement; or
 2. Authorize a manager, member or other person to act on behalf of the limited liability company in a manner that contravenes an operating agreement.

7.04. *Indemnification of Managers, Members, Employees and Agents; Insurance.*

- a. A limited liability company may indemnify or, if provided in the articles of organization or an operating agreement, shall in all cases indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, because that person is or was a manager, member, employee or agent of that limited liability company or is or was serving at the request of that limited liability company as a director, officer, trustee, partner, fiduciary, employee or agent of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such an action, suit or proceeding; provided that no indemnification may be provided for a person with respect to a matter for which that person is finally adjudicated:
 1. Not to have acted honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of a limited liability company or its members or not to have disclosed his or their duties with the care that an ordinarily prudent person in a like position would exercise under similar circumstances or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of that plan or trust or its participants or beneficiaries; or
 2. With respect to a criminal action or proceeding, to have had reasonable cause to believe that that person's conduct was unlawful.

The termination of an action, suit or proceeding by judgment, order or conviction adverse to that person, or by settlement or plea of nolo contendere or its equivalent, does not of itself create a presumption that that person did not act honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of a limited liability company or its members or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of that plan or trust or its participants or beneficiaries and, with respect to a criminal action or proceeding, had reasonable cause to believe that that person's conduct was unlawful.

b. Notwithstanding any provision of subsection (a), a limited liability company does not have the power to indemnify a person with respect to a claim, issue or matter asserted by or in the right of that limited liability company for which that person is finally adjudicated to be liable to that limited liability company unless the Tribal Court determines that, in view of all the circumstances of the case, that person is fairly and reasonably entitled to indemnity for such amounts as the Tribal Court determines reasonable.

c. Notwithstanding the provision of subsections (a), (b) or (d) to the contrary to the extent that a manager, member, employee or agent of a limited liability company has been successful on the merits or otherwise in defense of an action, suit or proceeding referred to in subsection (a) or (b), or in defense of a claim, issue or matter referred to in subsection (a) or (b), that limited liability company shall indemnify that manager, member, employee or agent against expenses, including attorney's fees, actually and reasonably incurred by that manager, member, employee or agent in connection with the action, suit or proceeding. The right to indemnification granted by this subsection may be enforced by a separate action against that limited liability company if an order for indemnification is not entered by a court in the action, suit or proceeding in which that manager, member, employee or agent was successful on the merits or otherwise.

d. Any indemnification under subsection (a), unless ordered by the Tribal Court or required by the articles of organization or operating agreement, may be made by the limited liability company only as authorized in the specific case upon a determination that indemnification of the manager, member, employee or agent is proper in the circumstances and in the best interests of the limited liability company or otherwise required under the operating agreement. If the articles of organization vest management in a manager or managers, that determination must be made by the manager or managers by a majority vote of a quorum consisting of managers who were not parties to that action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested managers so directs, by independent legal counsel in a written opinion or by a majority in interest of the members who are not parties to the action. If the articles of organization do not vest management in a manager or managers, the members shall make that determination by majority vote of a quorum consisting of members who were not parties to that action, suit or proceeding. Such a determination once made may not be revoked and upon the making of that determination the manager, member, employee or agent may enforce that indemnification against the limited liability company by a separate action notwithstanding any attempted or actual subsequent action by the manager, managers or members.

e. Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding may be authorized and paid by a limited liability company in advance of the final disposition of that action, suit or proceeding upon a determination made in accordance with the procedure established in subsection (d) that, based solely on the facts then known to those making the determination and without further investigation, the person seeking indemnification satisfied the standard of conduct prescribed by subsection (a), or if so provided in the articles of organization or an operating agreement, these expenses must in all cases be authorized and paid by that limited liability company in advance of the final disposition of that action, suit or proceeding upon receipt by that limited liability company of:

1. A written undertaking by or on behalf of the manager, member, employee or agent to repay that amount if that person is finally adjudicated:

A. Not to have acted honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of a limited liability company or its members or not to have discharged his or their duties with the care that an ordinarily prudent person in a like position would exercise under similar circumstances or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of such a plan or trust or its participants or beneficiaries;

B. With respect to a criminal action or proceeding, to have had reasonable cause to believe that the person's conduct was unlawful; or

C. With respect to a claim, issue or matter asserted in an action, suit or proceeding brought by or in the right of a limited liability company, to be liable to that limited liability company, unless the court in which that action, suit or proceeding was brought permits indemnification in accordance with subsection (c); and

2. A written affirmation by the manager, member, employee or agent that the person has met the standard of conduct necessary for indemnification by a limited liability company as authorized in this section.

The undertaking required by paragraph (1) must be unlimited general obligation of the person seeking the advance but need not be secured and may be accepted without reference to financial ability to make the repayment.

f. The indemnification and entitlement to advances of expenses provided by this section is not exclusive of other rights to which those indemnified may be entitled under an operating agreement, other agreement, vote of members or otherwise, both as to action in that person's official capacity and as to action in another capacity while holding such an office, and continues for a person who has ceased to be a manager, member, employee, agent, trustee, partner or fiduciary and inures to the benefit of the heirs, executors and administrators of that person. A right to indemnification required by the articles of organization or an operating agreement may be enforced by a separate action against a limited liability company if an order for indemnification has not been entered by a court in an action, suit or proceeding for which indemnification is sought.

g. A limited liability company may purchase and maintain insurance on behalf of a person who is or was a manager, member, employee or agent of that limited liability company, or is or was serving at the request of that limited liability company as a director, officer, trustee, partner, fiduciary, employee or agent of a corporation, partnership, joint venture, trust, pension or other employee benefit plan or other enterprise against any liability asserted against that person and incurred by that person in such a capacity, or arising out of that person's status as such, whether or not that limited liability company would have the power to indemnify that person against such a liability under this section.

h. For purposes of this section, references to a "limited liability company" include, in addition to a surviving limited liability company or new limited liability company, a participating limited liability company in a consolidation or merger.

7.05. *Remedies for Breach of Operating Agreement by Manager.* An operating agreement may provide that:

a. A manager or member who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement is subject to specified penalties or specified consequences; and

b. At the time or upon the happening of certain events specified in the operating agreement, a manager or member is subject to specified penalties and specified consequences.

Article VIII. Finance

8.01. *Capital Contributions.* The contributions to capital of a member to the limited liability company may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

- a. A member of a limited liability company is liable to the limited liability company:
 1. for the difference between the amount of the member's contributions to capital which have been actually made and the amount which is stated in the operating agreement or other written contract as have been made, even if the member is unable to do so by reason of death, disability or any other reason; and
 2. for any unpaid contribution to capital which the member, in the operating agreement or other written contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other written contract, even if the member is unable to do so by reason of death, disability or any other reason.
- b. A member holds as trustee for the limited liability company:
 1. specific property which is stated in the operating agreement or other written contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or erroneously returned; and
 2. money or other property wrongfully paid or conveyed to the member on account of the member's contribution.
- c. The liabilities of a member as set out in this s. 8.01 may be waived or compromised upon the consent of all other members. This waiver or compromise does not affect the rights of a creditor of the limited liability company who extended credit or whose claim arose prior to the dissolution of the limited liability company.
- d. When a member has rightfully received the return, in whole or in part, of the member's capital contribution, the member remains liable to the limited liability company for any sum, not in excess of the return with interest, necessary to discharge the limited liability company's obligations to all creditors of the limited liability company who extended credit or whose claims arose before the return.
- e. An operating agreement or articles of organization may provide that the interest of a member who fails to make any contribution or other payment that the member is required to make is subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's interest in the limited liability company, subordinating the defaulting member's interest in the limited liability company to that of the nondefaulting members, a forced sale of the interest in the limited liability company, forfeiture of the interest in the limited liability company, that lending by the nondefaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's interest in the limited liability company by appraisal or by formula and redemption and sale of the member's interest in the limited liability company at that value or other remedy or consequences. Except as provided in subsection (c), the availability or exercise of any of these remedies does not preclude the exercise by any creditor of the limited liability company of the rights conferred by subsection (e).

8.02. *Allocation of Profits and Losses and Distributions.* The profits and losses and distributions of cash or other assets of a limited liability company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses and distributions shall be allocated on the basis of value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned. The value of the contributions made shall be determined as stated in the articles of organization, the operating agreement or the records of the limited liability company as required hereunder.

Article IX. Ownership and Disposition of Property

9.01. *Ownership of Limited Liability Property.*

- a. Real or personal property owned or purchased by a limited liability company may be held and owned, and conveyance shall be made, in the name of the limited liability company. A member has no specific interest in the property of a limited liability company.
- b. Subject to subsection (d), property is presumed owned by a limited liability company if it is acquired in the name of that limited liability company.
- c. Subject to subsection (d), property is presumed owned by a limited liability company if it is purchased with funds of that limited liability company even if it is acquired in the name of a member or other person.
- d. Property is presumed separate property of one or more members or other persons if it is acquired in the name or names of that person or those persons without use of funds of a limited liability company even though the property is used for purposes of the business of that limited liability company.

9.02. *Transfers of Property.*

- a. Except as provided in subsection (e), title to property of a limited liability company that is held in the name of that limited liability company may be transferred by an instrument of transfer executed by a member in the name of that limited liability company.
- b. Title to property of a limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them in their capacity as members or managers of that limited liability company or of the existence of a limited liability company, even if the name of that limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.
- c. Property transferred under subsections (a) and (b) may be recovered by a limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under this Ordinance, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind that limited liability company.
- d. Title to property of a limited liability company that is held in the name of one or more persons other than that limited liability company without an indication in the instrument transferring title to the property to them in their capacity as members or managers of that limited liability company or of the existence of a limited liability company may be transferred free of claims of that limited liability company or the members by the person in whose name title is held to a transferee who gives value without having notice that it is property of that limited liability company.
- e. If the articles of organization provide that management of a limited liability company is vested in a manager or managers:
 1. Title to property of the limited liability company that is held in the name of that limited liability company may be transferred by an instrument of transfer executed by a manager in the name of that limited liability company; and
 2. A member, acting solely in the capacity as a member, does not have authority to transfer title to property of a limited liability company that is held in the name of a limited liability company.

9.03. *Conditions for Property Distribution.*

- a. From time to time, the limited liability company may distribute its property to the members of the limited liability company upon the basis stipulated in the operating agreement if, after distribution is made, the fair value of the assets of the limited liability company is in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions.

- b. Except as provided in the operating agreement or articles organization:
 - 1. A member, regardless of the nature of that member's contribution, has no right to demand and receive a distribution from a limited liability company in any form other than cash; and
 - 2. A member may not be compelled to accept from a limited liability company a distribution of an asset in kind to the extent that the percentage of that asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from that limited liability company.
- c. At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of a limited liability company with respect to the distribution.
- d. A distribution may not be made if after giving effect to the distribution:
 - 1. The limited liability company is not able to pay its debts as they become due; and
 - 2. All liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liability for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited is included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.
- e. A limited liability company may base a determination that a distribution is not prohibited under subsection (d) on either:
 - 1. Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
 - 2. A fair valuation or other method that is reasonable under the circumstances.
- f. The effect of a distribution under subsection (a) is measured as of:
 - 1. The date the distribution is authorized if payment occurs within 120 days after the date of authorization; or
 - 2. The date payment is made if it occurs more than 120 days after the date of authorization.
- g. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is parity with that limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.
- h. If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (d).
- i. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.
- j. Distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in an operating agreement or the articles of organization. If the operating agreement or articles of organization do not so provide, each member or other person entitled to the interest of a member shares in any distribution in proportion to their membership interests. A member is entitled to received distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement or articles of organization or at the times determined by the members or managers.
- l. Upon a withdrawal of a member that does not cause dissolution, a withdrawing member is entitled to received any distribution to which the member is entitled under the operating agreement. If not

otherwise provided in the operating agreement, the member is not entitled to receive any distribution.

9.04. *Liability upon Wrongful Distribution.*

- a. Except as otherwise provided in this Ordinance a member or manager who votes for or assents to a distribution in violation of the operating agreement, articles of organization or s. 9.03 is personally liable to a limited liability company for the amount of the distribution that exceeds what could have been distributed without violation s. 9.03, articles of organization or the operating agreement if it is established that the member or manager did not act in compliance with s. 9.03.
- b. Each member or manager held liable under subsection (a) for the unlawful distribution is entitled to contribution;
 1. From each other member or manager who could be held liable under subsection (a) for the unlawful distribution; and
 2. From each member for the amount that member received knowing that the distribution was made in violation of s. 9.03, the articles of organization or the operating agreement.
- c. A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution is measured under s. 9.03.

Article X. Admission of Member; Membership Interests

10.01. *Admission of Member.*

- a. Subject to subsection (b), a person may become a member in a limited liability company:
 1. When the person acquires a limited liability company interest directly from a limited liability company, upon compliance with the operating agreement or articles of organization or, if neither the operating agreement nor the articles of organization so provide, upon the written consent of all members; and
 2. When the person is an assignee of a limited liability company interest.
- b. A person becomes a member in a limited liability company organized under this Ordinance on the later of:
 1. The date a limited liability company is formed in accordance with the terms hereof; or
 2. The time provided in the operating agreement or articles of organization or, if no such time is provided in the operating agreement or articles of organization, when the member's admission is recorded in the records of a limited liability company.

10.02. *Withdrawal of Member.*

- a. A person qualified to be a member under this Ordinance ceases to be a member of a limited liability company upon the occurrence of any of the following events:
 1. The member withdraws by voluntary act from a limited liability company.
 2. The member is removed as a member.
 3. The member ceases to be a member pursuant to provisions of an operating agreement or articles of organization.
 4. Subject to a contrary provision in the operating agreement or articles of organization, when the member assigns all of that member's interest in a limited liability company, by an affirmative vote of a majority in interest of the members who have not assigned their interests.
 5. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time when, the member:
 - A. Makes an assignment for the benefit of creditors;
 - B. Files a voluntary petition in bankruptcy;
 - C. Is adjudicated a bankrupt or an insolvent;
 - D. Files a petition or answer seeking for that member any reorganization arrangement, composition, readjustment, liquidation, dissolution or similar relief

under any law or regulation;

E. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that member in a proceeding of that nature; or

F. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that member or of all or a substantial part of that member's properties.

6. Subject to a contrary provision in the operating agreement or articles of organization, or written consent of a majority in interest of all members of the time, 120 days after the commencement of a proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law or regulation, the proceeding had not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence over a trustee, receiver or liquidator of the member of all or a substantial part of the member's properties, the appointment is not vacated or stayed, or if within 90 days after the expiration of a stay, the appointment is not vacated.

7. Subject to a contrary provision in the operating agreement or articles or organization, or written consent of a majority in interest of all members at the time, when a member who is an individual:

A. Dies; or

B. Is adjudicated incompetent to manage the member's person or estate by a court of competent jurisdiction.

8. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member is a trust or is acting as a member because that member is a trustee or a trust, the termination of the trust, but not solely the substitution of a new trustee.

9. Subject to a contrary provision in the operating agreement or article of organization or written consent of a majority in interest of all members at the time, when a member is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company.

10. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the suspension of its charter and the expiration of 90 days after the date of notice to the corporation of suspension without a reinstatement of its charter.

11. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member is an estate, the distribution by the fiduciary of the estate's entire interest in a limited liability company.

b. The members may provide in the operating agreement or articles of organization for other events the occurrence of which result in a person ceasing to be a member of a limited liability company.

c. Unless the operating agreement or articles of organization provide that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving a 30-day written notice to the other members or such other notice as provided in the operating agreement or articles of organization. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement or the articles of organization, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, a limited liability company may recover from the withdrawing member the reasonable costs of obtaining replacement of the services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to that member, in addition to pursuing any remedies provided for in an

operating agreement or otherwise available under applicable law.

10.03. *Statement of Withdrawal.* A member who has withdrawn may, or the limited liability company may, file a statement of withdrawal stating the name of the limited liability company and that the member has withdrawn from the limited liability company.

10.04. *Nature of Membership Interest.* A membership interest in a limited liability company is personal property.

10.05. *Assignment of Membership Interest.*

a. Except as provided in an operating agreement or articles of incorporation and subject to the prior approval of the Tribe:

1. A membership interest is assignable in whole or in part;
2. An assignment entitles the assignee to share in profits and losses, to receive the distribution or distributions and to receive the allocation of income, gain, loss, deduction or credit or similar item to which the assignor was entitled to the extent assigned;
3. An assignment of a membership interest does not of itself dissolve a limited liability company or entitle the assignee to participate in the management and affairs of a limited liability company or to become or exercise any rights of a member;
4. Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member;
5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and
6. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

b. An operating agreement or a limited liability company's articles of organization may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by a limited liability company and may also provide for the assignment or transfer of a membership interest represented by such a certificate and make other provisions with respect to the certificates.

c. Unless otherwise provided in an operating agreement, the pledge of or granting of a security interest, lien or other encumbrance in or against any or all of the membership interest of a member is not an assignment and does not cause the member to cease to be a member or to cease to have the power to exercise the rights or powers of a member.

10.06. *Rights of Judgment Creditor.* On application to the Tribal Court by a judgment creditor of a member, the Tribal Court may charge the membership interest of the member with payment of the unsatisfied amount of judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This Ordinance does not deprive a member of the benefit of any exemption laws applicable to that member's membership interest.

10.07. *Right of Assignee to Become a Member.*

a. An assignee of a membership interest may become a member if:

1. The operating agreement or articles of organization so provide; or
2. All other members and the assignee consent.
3. The Tribe, if a member of the limited liability company, consents, whether in the authorization regarding formation or otherwise.

b. An assignee who becomes a member has to the extent assigned the rights and powers and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement and this Ordinance. An assignee who becomes a member also is liable for any obligations of the assignor to make contributions and to return distributions required hereunder. The assignee is not obligated for liabilities of which the assignee had no knowledge of at the time the assignee became a member and that could not be ascertained from an operating agreement or the articles of

organization.

c. Except as otherwise provided in the operating agreement or articles of organization, a member who assigns that member's entire interest in a limited liability company ceases to become a member or to have the power to exercise any rights of a member when an assignee of that member's interest becomes a member with respect to the assigned interest in accordance with the terms hereof.

10.08. *Powers of Estate of a Deceased or Incompetent Member.* If a member who is an individual dies or the Tribal Court adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator or other legal representative has all of the rights of an assignee of the member's interest.

Article XI. Mergers

11.01. *Merger or Consolidation.*

a. For purposes of this Article, "other business entity" means any association or legal entity other than a limited liability company, organized to conduct business, including a corporation, limited partnership, general partnership, limited liability partnership, joint venture, joint stock company and business trust authorized by applicable statutes to merge or consolidate with a limited liability company.

b. Pursuant to a plan of merger or consolidation that complies with and is approved in accordance with this Article, any one or more limited liability companies may merge or consolidate with or into one or more limited liability companies or other business entities, with the limited liability company or other business entity as the agreement provides being the surviving or resulting limited liability company or other business entity.

c. Rights or securities of or interests in a limited liability company or other business entity that is a party to the merger or consolidation may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving or resulting limited liability company or other business entity.

11.02. *Approval of Merger or Consolidation.*

a. Pursuant to an agreement of merger or consolidation, one or more domestic limited liability companies may merge or consolidate with or into one or more domestic limited liability companies or one or more other business entities with or into one or more limited liability companies or one or more other business entities formed or organized under the laws of the Tribe or any state of the United States or any foreign country or other foreign jurisdiction, or any combination thereof, with such domestic limited liability companies or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability companies or other business entity. Unless otherwise provided in writing in the operating agreement or in the articles of organization, a limited liability company that is a party to a proposed merger or consolidation must approve the merger or consolidation agreement by the consent of a majority in interest of the members or, if there is more than one class or group of members, by consent of a majority in interest of the members of each class or group. If, as a result of the merger or consolidation, one or more members of a limited liability company would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger or consolidation must require the execution by each such member of a separate written consent to become subject to such personal liability.

b. Each limited liability company or other business entity that is a party to a proposed merger or consolidation pursuant to this Article shall approve the merger or consolidation in the manner and by the vote required by the laws applicable to such a business entity and, to the extent allowed under such laws, its governing documents.

c. Each limited liability company or other business entity that is a party to the merger or consolidation has those rights to abandon the merger or consolidation that are provided for in the

merger or consolidation agreement or the laws applicable to the business entity.

11.03. *Plan of Merger or Consolidation.*

a. Each constituent limited liability company or other business entity that is a party to the merger or consolidation shall enter into a written plan of merger or consolidation that must be approved by a majority of the members unless the operating agreement otherwise provides.

b. The plan of merger or consolidation must set forth:

1. The name and current jurisdiction of each limited liability company or other business entity that is a party to the merger or consolidation and the name and jurisdiction of the surviving or resulting limited liability company or other business entity into which each limited liability company or other business entity merges or consolidates;
2. The terms and conditions of the proposed merger or consolidation and the mode of carrying the merger or consolidation into effect;
3. The manner and basis of converting the interests in each limited liability company into interests of the surviving or resulting limited liability company or other business entity that is a party to the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving or resulting limited liability company or other business entity or, in whole or in part, into cash or other property;
4. In the case of a merger, a statement of any changes in or a restatement of the organizing documents of the surviving limited liability company or other business entity or a statement that the organizing documents of the surviving limited liability company or other business entity remain unchanged; or, in the case of a consolidation, with respect to the resulting limited liability company or other business entity, all of the statements required to be set forth in the organizing documents for that type of business entity; and
5. Other provisions relating to the proposed merger or consolidation determined necessary or desirable.

11.04. *Certificate of Merger or Consolidation.*

a. The limited liability company or other business entity surviving or resulting from the merger or consolidation shall deliver to the Department a certificate of merger or consolidation executed by each constituent limited liability company setting forth:

1. The name and current jurisdiction of each limited liability company or other business entity that is to merge or consolidate;
2. That an agreement of merger or consolidation has been approved and executed by each limited liability company or other business entity that is a party to the merger or consolidation;
3. The name of the surviving or resulting limited liability company or other business entity;
4. If the surviving or resulting limited liability company is not organized under the laws of the Tribe, a statement that the surviving or resulting limited liability company or other business entity:

A. Agrees to accept service of process by certified mail in a proceeding for enforcement of an obligation of a party to the merger or consolidation that was organized under the laws of the Ordinance, as well as for enforcement of an obligation of the surviving or resulting limited liability company or other business entity arising from the merger or consolidation; and

B. Appoints a registered agent for service of process in any such proceeding.

5. If shareholder approval of any corporation party to the merger or consolidation was not required, a statement to that effect;
6. If approval of the shareholders of one or more corporations party to the merger or consolidation was required:

- A. The designation, number of outstanding shares and number of shares entitled to vote on the written agreement or plan of merger or consolidation as to each corporation; the number of shares voted for and against the agreement or plan; and a statement that the number of votes cast for the agreement or plan was sufficient for approval by the shareholders; and
 - B. If the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each such class, the number of shares of each such class voted for and against the written agreement or plan and a statement that the number of votes cast for the agreement or plan by each class was sufficient for approval by that class;
- 7. In the case of a merger, a statement of any changes in or a restatement of the organizing documents of the surviving limited liability company or other business entity or a statement that the organizing documents of the surviving limited liability company or other business entity remain unchanged; or, in the case of a consolidation, with respect to the resulting limited liability company or other business entity, all of the statements required to be set forth in the organizing documents for that type of business entity;
 - 8. That the executed agreement or plan of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company or other business entity and stating the address of such place of business and that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company or other business entity, on request and without cost, to a person holding an interest in a limited liability company or other business entity that is to merge or consolidate;
 - 9. The date when the merger or consolidation is to take effect, not to exceed 60 days subsequent to the filing date of the certificate of merger or consolidation;
 - 10. A statement to the effect that the merger or consolidation was effected in compliance with the laws applicable to mergers or consolidations of all parties to the merger or consolidation; and
 - 11. An agreement that the surviving or resulting limited liability company or other business entity shall continue to comply with all provisions of all laws applicable to mergers or consolidations of all parties to the merger or consolidation, including, without limitation, provisions on payment of amounts to which dissenting shareholders are entitled, if available.
- b. A merger or consolidation takes effect upon the later of the effective date of the filing of the certificate of merger or consolidation or the date set forth in the certificate of merger or consolidation.
 - c. The certificate of merger or consolidation must be executed by a limited liability company that is a party to the merger or consolidation in the manner provided for in this Ordinance and must be filed with the Department in the manner provided for herein.
 - d. The certificate of merger or consolidation acts as a certificate of cancellation for a limited liability company that is not the surviving or resulting business entity in the merger or consolidation.
 - e. A written agreement of merger or consolidation approved in accordance with the terms hereof may effect an amendment to the operating agreement or effect the adoption of a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. An approved written plan of merger or consolidation may also provide that the operating agreement of any constituent limited liability company to the merger or consolidation, including a limited liability company formed for the purpose of consummating a merger or consolidation, must be the operating agreement of the surviving limited liability company. An amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection is effective at the effective time and date of the merger or consolidation. This subsection may not be construed to limit the accomplishment of a merger or consolidation or of any

of the matters referred to in this subsection, by any other means including that the operating agreement of a constituent limited liability company formed for the purpose of consummating a merger or consolidation, must be the operating agreement of the surviving or resulting limited liability company.

11.05. *Effects of Merger or Consolidation.*

- a. The limited liability companies or other business entities that are parties to the merger or consolidation agreement become a single entity, which in the case of a merger is the limited liability company or other business entity designated in the plan of merger as the survivor, and in the case of a consolidation is the resulting limited liability company or other business entity provided for in the plan of consolidation.
- b. The separate existence of each party to the merger or consolidation agreement, except for the surviving or resulting limited liability company or other business entity, ceases.
- c. The surviving or resulting limited liability company or other business entity possesses all the rights, privileges, immunities, powers and franchises of each constituent limited liability company or other business entity and is subject to all the restrictions, disabilities and duties of each of the parties to the extent that those rights, privileges, immunities, powers, franchises, restrictions, disabilities and duties are applicable.
- d. All property, real, personal and mixed and all debts due, including promises to make capital contributions and subscriptions for shares or interests, and all other choses in action and all other interests of or belonging to or due to each of the constituent entities vest in the surviving or resulting limited liability company or other business entity without further act or deed.
- e. The title to all real estate and any interest in real estate vested in a constituent limited liability company or other business entity do not revert and are not in any way impaired by reason of the merger or consolidation.
- f. The surviving or resulting limited liability company or other business entity is liable for all liabilities and obligations of each constituent limited liability companies or other business entities so merged or consolidated and any claim existing or action or proceeding pending by or against a constituent limited liability company or other business entity may be prosecuted as if the merger or consolidation had not taken place or the surviving or resulting limited liability company or other business entity may be substituted in the action.
- h. Neither the rights of creditors nor any liens on the property of a constituent limited liability company or other business entity are impaired by the merger or consolidation.
- i. The membership or other interests in a limited liability company or other business entity that are to be converted or exchanged into interests, cash, obligations or other property under the terms of the merger or consolidation agreement are so converted and the former holders of the membership or other interests are entitled only to the rights provided in the merger or consolidation agreement or the rights otherwise provided by law.

Article XII. Dissolution and Cancellation of Articles

12.01. *Dissolution.* A limited liability company organized under this Ordinance shall be dissolved upon the occurrence of any of the following events:

- a. when the period fixed for the duration of the limited liability company in its articles of organization or operating agreement expires;
- b. when the limited liability company fails to meet the requirements to maintain at least one member;
- c. by written agreement signed by the members entitled to receive a majority of the profits of the limited liability company, unless otherwise provided in the operating agreement;
- d. upon the occurrence of an event specified in the articles of organization or operating agreement as an event resulting in dissolution; or

e. when the limited liability company is not the successor limited liability company in a merger or consolidation authorized under this Ordinance.

12.02. *Settlement upon Dissolution.*

a. In settling accounts after dissolution, the liabilities of the limited liability company shall be entitled to payment in the following order:

1. liabilities to creditors, in the order of priority as provided by law, except those liabilities to members of the limited liability company on account of their contributions;
2. except as provided in the operating agreement, liabilities to members of the limited liability company in respect of their contributions to capital; and
3. except as provided in the operating agreement, liabilities to members of the limited liability company in respect of their shares of the profits and other compensation by way of income on their contributions.

b. Members shall share in the limited liability company assets as provided in the operating agreement, or if not so provided, in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of claims.

12.03. *Certificate of Cancellation.* When all debts, liabilities, and obligations of the limited liability company have been paid or discharged, or adequate provision has been made to do so, and all of the remaining property and assets of the limited liability company have been distributed to the members, a certificate of cancellation shall be executed. The certificate shall set forth:

- a. the name of the limited liability company;
- b. that all taxes payable, debts, obligations, and liabilities have been paid or discharged, or that adequate provision has been made to do so;
- c. that all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests; and
- d. that there are no suits pending against the limited liability company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit.

12.04. *Filing of Certificate of Cancellation - Effect.*

a. The certificate of cancellation of a limited liability company shall be filed with the Department. If the certificate of cancellation conforms to law and all fees have been paid as prescribed in this Ordinance, the Department shall file the certificate of cancellation of the limited liability company and shall issue a certificate of cancellation and return it to the representative of the dissolved limited liability company.

b. Upon the issuance of the certificate of cancellation, the existence of the limited liability company shall cease, except for the purpose of suits other proceedings, and appropriate actions as provided in this Ordinance. The manager or managers in office at the time of dissolution, or the survivors of the managers, or, if none, the members, shall thereafter become trustees for the members and creditors of the dissolved limited liability company. In this capacity, the trustees may distribute any limited liability company property discovered after dissolution, convey real estate, and take other necessary action on behalf of and in the name of the dissolved limited liability company.

12.05. *Cancellation of Articles of Organization.* The articles of organization of a limited liability company shall be cancelled by the Department upon issuance of the certificate of cancellation.

12.06. *Winding Up.*

a. Unless otherwise provided in the operating agreement or articles or organization, the managers or, if there is no manager, a majority in interest of the members or one or more liquidating trustees approved by the members may wind up a limited liability company's affairs. The Tribal Court, upon cause shown, may wind up a limited liability company's affairs upon application of a member or a

member's legal representative or assignee and in connection with the winding up may appoint a liquidating trustee.

b. Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in s. 12.03, the persons winding up a limited liability company's affairs in the name of and for and on behalf of the limited liability company may prosecute and defend suits whether civil, criminal or administrative, settle and close a limited liability company's business, dispose of and convey a limited liability company's property, discharge or make reasonable provision for a limited liability company's liabilities and distribute to the members any remaining assets of a limited liability company, all without affecting the liability of members and without imposing liability on the liquidating trustee.

12.07. *Agency Power of Managers or Members After Dissolution.*

a. Except as provided in subsections (c), (d), and (e), after an event causing dissolution of a limited liability company a member may bind a limited liability company:

1. By an act appropriate for winding up a limited liability company's affairs or completing transactions unfinished at dissolution; and
2. By a transaction that would have bound a limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

b. The filing of the certificate of cancellation is presumed to constitute notice of dissolution for purposes of subsection (a)(2).

c. An act of a member that is not binding on a limited liability company pursuant to subsection (a) is binding if it is otherwise authorized by a limited liability company.

d. An act of a member that is binding under subsection (a) or otherwise authorized but is in contravention of a restriction on authority does not bind a limited liability company to persons having knowledge of the restriction.

e. If the articles of organization provide that management of a limited liability company vests in managers, a manager has the authority of a member provided for in subsection (a) and that member does not have that authority if acting solely in the capacity of a member.

12.08. *Payment or Provisions for Payment for Liabilities.* A limited liability company that has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to that limited liability company and all claims and obligations that are known to that limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, the claims and obligations must be paid in full and any such provision for payment made must be made in full. If there are insufficient assets, the claims and obligations must be paid or provided for according to priority and among claims and obligations of equal priority ratably to the extent of assets available. Unless otherwise provided in an operating agreement or the articles of organization, any remaining assets must be distributed as provided in this Ordinance. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of that person's actions in winding up a limited liability company.

12.09. *Involuntary Dissolution.*

a. A limited liability company, except for such companies as may be wholly owned by the Tribe or any subsidiary of the Tribe, may be dissolved involuntarily by order of the Tribal Court in an action filed by the legal counsel for the Department when it is established that the limited liability company:

1. obtained the issuance of its articles of organization or of its execution through fraud, in which case the certificate of organization shall be canceled as of the date of filing;
2. continually exceeded or abused the authority conferred upon it by law or by the operating agreement;
3. committed a violation of any provision of law whereby it has forfeited its charter;

4. carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;
 5. failed to amend its articles of organization as required by this Ordinance; or
 6. abused its powers contrary to the public policy of the Tribe.
- b. A limited liability company is delinquent if it fails to maintain a registered agent on the Reservation for 60 consecutive days.
- c. Unless the limited liability company's articles of organization are already suspended for any reason, the Department shall mail a notice of delinquency of each delinquent limited liability company to the managers of the limited liability company at the addresses set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. The notice of delinquency shall be mailed first class, postage prepaid, and shall include any forms necessary to correct the delinquency and shall state:
1. the nature of the delinquency;
 2. that the limited liability company shall be suspended, unless it corrects the delinquency and pays a notification fee within 30 days of the mailing of the notice of delinquency; and
 3. that a suspended limited liability company may be reinstated only after payment of a reinstatement fee.
- d. The Department shall assess the limited liability company a notification fee, as determined under regulations of the Department.
- e. A limited liability company that remains delinquent for more than 30 days after the mailing of the notice of delinquency under this section shall be suspended.
1. Unless the limited liability company's articles of organization are already suspended for any reason, if a limited liability company is suspended under this section, the Department shall mail a notice of suspension to the managers of the limited liability company at the addresses set forth in the articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization.
 2. The notice of suspension shall state:
 - A. that the certificate of organization has been suspended;
 - B. the reason for the suspension;
 - C. the date of the suspension;
 - D. that the limited liability company may remove the suspension by correcting the delinquency and paying a reinstatement fee, in addition to any fees required by this Ordinance; and
 - E. that the limited liability company's certificate of organization will be canceled involuntarily one year after the date of mailing of the notice of suspension unless the limited liability company has removed the suspension before that time.
- f. If the limited liability company does not remove the suspension within one year after the date of mailing of the notice of suspension, the limited liability company's articles of organization may be cancelled by the Director. The Department shall mail a certificate of cancellation to the managers of the limited liability company at the address set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. No canceled limited liability company may be reinstated, except as set forth in subsection (g). Any assumed names filed on behalf of the canceled limited liability company under s. 5.08 are also canceled at that time. The name of a canceled limited liability company and any assumed names on its behalf are available one year after the date of cancellation for use by any other person transacting business on

the Reservation, or person doing business under an assumed name under s. 5.08.

g. Any limited liability company that has been suspended under subsection (c) or whose articles of organization have been cancelled under subsection (f) may be reinstated within one year following cancellation upon application and payment of all penalties and reinstatement fees.

h. A member of a limited liability company has no personal liability solely by reason of the limited liability company having had its certificate of organization suspended or canceled.

i. A limited liability company that has had its certificate suspended or canceled may not maintain any action, suit, or proceeding in the Tribal Court until it has removed the suspension or reinstated its certificate following cancellation.

Article XIII. Derivative Actions, Proceedings, Notice and Service of Process

13.01. *Member as a Party to Proceedings.* A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except when the object is to enforce a member's right against, or liability to, the limited liability company.

13.02. *Service of Process, Notice, or Demand.*

a. Process against a limited liability company may be served upon the registered agent.

b. Service on a limited liability company organized under this Ordinance may be made:

1. by personal delivery to the registered agent; or

2. by writing, which shall be mailed by registered or certified mail to the registered agent.

c. Service is perfected under paragraph (b)(2) on the earliest of:

1. the date the limited liability company receives the process;

2. the date shown on the return receipt, if signed on behalf of the limited liability company;

or

3. five days after mailing.

d. This Section does not limit or affect the right to serve, in any other manner permitted by law, any process, notice or demand required or permitted by law to be served upon a limited liability company.

13.03. *Waiver of Notice.* If under the provisions of this Ordinance, notice is required to be given, a waiver in writing signed by the person or persons entitled to the notice, whether made before or after the time for notice is given, is equivalent to giving them notice.

13.04. *Right of Action - Derivative Action.* A member may bring an action on the right of a limited liability company to recover a judgment in its favor if the managers with authority to do so have refused to bring the action and the managers' decision not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unprejudiced exercise of judgment, or if an effort to cause those managers to bring the action is not likely to succeed.

13.05. *Proper Plaintiff - Derivative Action.* In a derivative action, the plaintiff must be a member at the time of bringing the action and:

a. must have been a member at the time of the transaction of which the member complains; or

b. the member's status as a member must have devolved upon him by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

13.06. *Pleading - Derivative Action.* In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a manager or the reasons for not making the effort.

13.07. *Expenses - Derivative Action.* If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the Tribal Court may award the plaintiff reasonable expenses, including attorneys' fees, and shall direct him to remit to the limited liability company the remainder of those proceeds received by him.

13.08. *Security and Costs.*

- a. In any action instituted in the right of any limited liability company, unless the contributions to the limited liability company property that are allocable to the plaintiff amount to 5% or more of the contributions of all members, or the contributions that are allocable to the plaintiff have a market value in excess of \$25,000, the limited liability company in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of the action or may be incurred by other parties named as defendant for which the limited liability company may become legally liable, but not including attorneys' fees.
- b. Market value shall be determined as of the date that the plaintiff institutes the action, or, in the case of an intervener, as of the date that he becomes a party to the action.
- c. The amount and nature of the security shall be determined by the Tribal Court, and the amount of the security may from time to time be increased or decreased by the Tribal Court, upon showing that the security provided has or may become inadequate or is excessive.
- d. The limited liability company shall have recourse to the security in the amount as the Tribal Court shall determine upon the termination of such action if the Tribal Court finds the action was brought without reasonable cause.

Article XIV. Tribal Court Authority, Department, Appeals and Fees and Charges

14.01. *Department Duties and Functions.*

- a. The Department is charged with the administration and enforcement of this Ordinance.
- b. Every certificate and other document or paper executed by the Department, in pursuance of any authority conferred upon it by this Ordinance, and sealed with the seal of the Tribe, and all copies of such papers as well as documents and other papers filed in accordance with the provisions of this Ordinance, when certified by it and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any Tribal Court and before a public officer or official body.
- c. The Department is authorized to promulgate regulations to effectuate the policies and purposes of this Ordinance.

14.02. *Fees and Charges.* The Department shall impose fees and charges in accordance with a schedule promulgated pursuant through regulations.

14.03. *Nonpayment of Fees.*

- a. The Department shall not file any articles, statements, certificates, reports, applications, notice or other papers relating to any limited liability company organized under the provisions of this Ordinance until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the limited liability company is in default in the payment of any fees, charges or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges and sanctions, of a written notice of resignation by a registered agent of a limited liability company.
- b. No limited liability company required to pay a fee, charge or sanction under this Ordinance shall maintain within the Reservation any civil action until all such fees, charges and sanctions have been paid in full.

14.04. *Administrative Appeals.*

- a. Any person aggrieved by a decision of the Department may appeal in writing for a full hearing before the Director under such rules and regulations as the Department may prescribe.
- b. Any administrative appeal as provided for under this Section must be begun by filing of a written request for a hearing with the Department within 30 days of the decision being appealed.

14.05. *Tribal Court Review.*

- a. The Tribal Court shall have sole jurisdiction to review final decisions of the Department, subject

to the limitations set forth in this Ordinance, if the appellant has exhausted all administrative remedies provided by the Department. An appellant shall be deemed to have exhausted the administrative remedies of the Department if the:

1. Department shall have failed to schedule and hold a hearing on the merits of the administrative appeal within 45 days after receipt of a written request for a hearing, unless such delay is requested or agreed to by the appellant.
2. Department shall fail to issue a written decision on the matter appealed within 30 days of the hearing on the merits of the administrative appeal.

b. The Department, Director, employees, officers and agents shall be immune from any suit in law or equity while performing their lawful duties within the scope of their authority. The Tribal Court shall have jurisdiction, however, to review any final decision of the Department; provided, that decisions of the Department shall only be reversed by the Tribal Court if found to be arbitrary and capricious; and provided further, that the Tribal Court shall not exercise de novo review of a decision of the Department.

14.06. *Limitations on Suits Against Department.*

- a. To be effective, any suit against the Department must be commenced by the filing of a petition in the Tribal Court not later than 30 days after the date of issuance of a final decision by the Department or 30 days after expiration of those periods of review set forth in s. 14.03.
- b. In no event shall the Tribal Court award or order the payment of damages, costs or attorneys fees against the Department or Tribe or direct any other remedy except to enjoin or overturn the action of the Department being appealed.

14.07. *Involuntary Dissolution or Liquidation by Tribal Court.* The Tribal Court shall have full and the sole power to liquidate the assets and business of a limited liability company:

- a. In an action filed by a member of the limited liability company when the Tribal Court finds that:
 1. The members are so divided respecting the management of the business and affairs of the limited liability company that either the limited liability company is suffering or will suffer irreparable injury, or the business and affairs of the limited liability company can no longer be conducted to the advantage of the members generally.
 2. The limited liability company has abandoned its business and has failed within a reasonable period of time to take steps to dissolve and liquidate its affairs and distribute its assets.
- b. In an action filed by legal counsel for the Department, when the Tribal Court finds the limited liability company:
 1. Has failed to comply with the provisions of this Ordinance or regulations promulgated thereunder.
 2. Procured its formation through fraudulent misrepresentation or concealment of material fact(s).
 3. Has violated the laws of the Tribe.
 4. Has failed to file any document required by this Ordinance or requested by the Department within the time periods prescribed by this Ordinance or regulations of the Department.
 5. Has continued or persisted over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

14.08. *Other Court Relief.*

- a. The Tribal Court in an action filed by a member seeking relief under subsection 14.07(a) shall have full power to make any order or grant any relief other than dissolution or liquidation as in its discretion it may deem appropriate, including but not limited to:
 1. Canceling, altering or amending provisions contained in the articles of organization or

operating agreement of a limited liability company.

2. Directing, prohibiting or enjoining any act of the limited liability company or other persons who are parties to the Tribal Court action.

3. Providing for the purchase of the interest of the member bringing the action by the other members of the limited liability company at its fair market value.

b. Relief may be granted under this Section even though the Tribal Court does not find any of the elements prescribed for relief under s. 14.07.